COMMENT.

An important decision, not yet reported, has just been rendered by the Supreme Court of Connecticut, in the appeal from the order of the Probate Court distributing to the residuary legatees certain funds of the estate of William Leffingwell received by the administrator in settlement of claims against the United States Government, commonly known as the French Spoliation Claims. The reason for appeal is summed up briefly as follows: That the sum received by said administrator "was received by him in behalf of and as representing the *next of kin* of said William Leffingwell, and was not received by him as part of the estate of the said William Leffingwell, or as assets thereof."

It appears that William Leffingwell died in 1834, leaving a will in which, after disposing of the bulk of his property, there was a clause dividing the remainder of the estate among certain residuary legatees.

In his lifetime he had been part owner of the ship "Confederacy," captured by the French in 1797 and afterward condemned and sold. By the act of Congress of 1885, means were provided for ascertaining the claims of American citizens to legal idemnity for spoliations committed by the French prior to July 1801, and, on investigation in accordance with the terms of this act, it was decided that the seizure and condemnation as above related were illegal, that the claim was valid, and the amount of idemnity was determined. By the act of March 3rd, 1891, an appropriation was made by Congress to pay the amount so determined. It was received shortly after by the administrator, who, as suggested above, turned it over in equal parts to the residuary legatees, in accordance with the order of the Probate Court.

The question, on which the decision of this appeal depended, as to whether the sum should be held to be assets of the estate, or was received by the administrator on behalf of and as representing the next of kin, largely depended on the intention of Congress as indicated by the act of March 3rd, 1891.

An examination of the speeches and reports in cases where these claims were the subject of inquiry, led the court to conclude that it was the intention of Congress that said claims should be considered as property belonging to the estate. Likewise the Court of Claims regarded the sum awarded by it as assets of the estates of

the claimants. This view is further strengthened by the Massachusetts case of Balch *v.* Blagge, not yet reported, where it was held that Congress intended the money to be paid as part of the *estates* of the original sufferers, and that if it had been the intention that the awards should be paid to or for the benefit of those next of kin, it would have been easy to say so in a few words.

The act of March 3rd, 1891, however, provided "that in all cases where the original sufferers were adjudicated bankrupts the award shall be made on behalf of the next of kin, instead of to assignees in bankruptcy, and the awards in the cases of individual claimants shall not be paid until the Court of Claims shall certify to the Secretary of the Treasury that the personal representatives on whose behalf the award is made represent the next of kin, and the courts which granted the administrations respectively *shall have certified* that the legal representatives have given adequate security for the legal disbursements of the awards." It was contended that this is clearly indicative of an intent to make a direct gift to the next of kin of William Leffingwell, the original claimant.

This proviso was considered by the Supreme Court of Pennsylvania "In the matter of Clements' estates," 23 Atl. Rep. 631, and the reasoning of the court in that case was adopted in the case under discussion. If the above contention were true then it is evident that the administrator must have received the money as trustee and as no part of the estate of William Leffingwell. But, from the very terms of the proviso itself, it is clear that the money appropriated to pay their claim should be paid to the administrator in his capacity as administrator, and not as trustee. The last clause of the sentence quoted leaves no doubt that "legal representatives of decedents, executors and administrators, were intended to be the recipients and upon the trusts declared and appointed by the law of their plaintiff's domicil." By the law of Connecticut administration is granted by the Courts of Probate which have power to take security for the administration of decedent estates, but not for the execution of trusts. "The power and jurisdiction of these courts may be presumed to have been known to Congress, and therefore, when it required the Secretary of the Treasury to be certified by them 'that the legal representatives have given adequate security for the legal disbursements of the awards,' it must be presumed to have intended such security as they could take and certify. Requiring then as condition precedent to the payment of the award that the administrator should have given security as such, according to the laws of Connecticut,

for the legal disbursement of the same, it must have intended that the disbursement should be in accordance with the conditions of that security, viz, to the persons who were entitled to participate in the distribution of the estate upon which the administrator was acting: These are the persons who are described in the act as next of kin."

An appeal to the Supreme Court of the United States has been taken in this case.

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The confiscation by the Federal Government of the property of those who entered the Confederate service in the civil war was the occasion of an interesting and rather curious question, which has come before the courts at various times since the close of the war, and is discussed by the United States Supreme Court in the recent case of *Jenkins* v. *Collard*, 12 Sup. Ct. Rep. 868. By Act of Congress of July 17th, 1862, all the real property of one engaged in the rebellion was declared forfeited to the government during the period of his natural life. The life estate having been condemned and sold by the government under this act, what was the situation of the fee or reversionary interest? As upon the death of the offender his heirs took the property, the logical conclusion would seem to be that they took it by descent from him and that even after the confiscation proceedings, the reversionary interest or remainder still vested in him. But in *Wallach* v. *Van Riswick*, 92 U. S. 207, and several cases following it, the court held that since the intent of the confiscation act was to enfeeble the enemy by preventing its adherents from using their property in its support, therefore after a sale of the enemy's land under the act, there was left in him no interest which he could convey by deed. Subsequently however in *Avegno* v. *Schmidt*, 113 U. S. 293, and *Shields* v. *Schiff*, 124 U. S. 355, it was decided that the heirs at law of the person whose life estate had been confiscated took by descent from him and not from the United States.

Where then dwelt the naked fee during the life of the offender, or in the picturesque language of Mr. Justice Bradley, what was "the intermediate state in which the disembodied shade of naked ownership may have wandered during the period of its ambiguous existence?" The court held that the fee or remainder still continued in the original owner but without the power of alienation, and that it was therefore "a mere dead estate, or in a condition of suspended animation." The proclamation of pardon and amnesty made by the President December 25th, 1868, removed

this disability and restored to the offender the power of disposing of his reversionary interest. The court in *Jenkins* v. *Collerd*, held, however, that when the rebel had before the proclamation of amnesty given a warranty deed of the property, though the deed conveyed nothing, it operated as an estoppel and prevented him from asserting title to the property after his disability had been removed by the amnesty.

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A decision tending toward uniformity of law in the circuit courts and probably decisive of the question whether or not the contract of a stevedore is maritime in its nature, with its consequent lien, has just been handed down in the Circuit Court of Appeals for the Fifth Circuit in the case of *Dennett* v. *The Main*, 51 Fed. Rep. 954. The decisions have generally been in favor of the lien, save in the fifth circuit where the invariable rule has been against such a lien since the decision of Mr. Justice Bradley in *The Ilex*, 2 Woods 229, which decision is now overruled by a unanimous court. In the reported decision the court says: "A vessel, in taking on and unloading cargo, is earning freight; for, in loading and unloading, services are rendered, the expense of which necessarily enters into the affreightment contract. * * * It must be conceded that when the ship has finished its transit, the cargo must be unloaded. It must also be conceded that cargo delivered on the wharf is at the risk of the ship and must be loaded. Furnishers of supplies, like coal, to a steamship in a foreign port, preparing for a voyage, are conceded to have a maritime lien; but coal supplied and deposited on the wharf would be of no avail to the ship unless taken on board. We therefore conclude that on principle and weight of authority the services rendered by a stevedore to a ship in taking in and stowing and discharging cargo in a foreign port are services of a maritime nature from which a maritime lien results."

This decision removes the stumbling block found in *The Ilex*, *supra*, and kindred decisions in the fifth circuit, so we may say that the present rule in the United States gives a maritime lien in favor of a stevedore for his services rendered in a foreign port. (See *The Maritime Lien*, II. YALE LAW JOURNAL 9.)

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The doctrines laid down by the Supreme Court of the United States in the leading cases of *Robbins* v. *Shelby County Taxing District*, 120 U. S. 489, and *Ficklen* v. *Taxing District*, 145 U. S., have

been previously considered in these columns. It will be remembered that in the former case, under a statute of the State of Tennessee, a tax was attempted to be collected from a drummer selling goods by sample as the representative of an Ohio firm. The U. S. Supreme Court, reversing the decision of the Supreme Court of Tennessee, held—Mr. Chief Justice Waite, Mr. Justice Field and Mr. Justice Gray dissenting—that this was a regulation of inter-State commerce and therefore in violation of the Constitution of the United States. The Ficklen case arose under the same statute, but here the question was as to its constitutionality when applied to a commission merchant having a place of business and doing a general commission business within the taxing district. To the decision of the Supreme Court upholding the tax in this instance Mr. Justice Harlan alone dissented. The question involved in *Robbins* v. *Taxing District*, has again arisen in *Hurford* v. *State*, 20 S. W. Rep. 201 (Tenn.) and the decision follows that in the Robbins case. The opinion of the court, written by Mr. Justice Lurton draws a clear distinction between the two cases mentioned above. However we cannot help wondering whether, in view of the strong dissenting opinion in the Robbins case and the facts there pointed out by Chief Justice Waite, the Tennessee court was not somewhat reluctant to reverse its first decision; and whether it is not after all, extremely difficult for the average mind to regard this "drummer tax" as a regulation of inter-State commerce rather than as a tax on the privilege of carrying on a certain business within a certain territory.

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How far a municipal corporation may regulate a square or park within its limits, which it has dedicated to the public, is always an interesting question in every city which is extending its public improvements in that direction, but especially in New Haven, where the rights of the city fathers over "the Green" has always been a fruitful subject for legal discussion and historical research. A recent decision in Ohio (*Gleason et al.* v. *City of Cleveland.* 31 N. E. Rep. 802), may throw a little light on what such a dedication really implies. In 1796 the Connecticut Land Company laid out the city of Cleveland, assigning a certain part as "a square." This was used for different purposes of varying public character until 1858, when the city assumed control of the space and beautified it as a park. In 1891 full power was given to the board of park commissioners by the legislature to "take charge and have the entire management, control and regulation

of all public grounds and parks belonging to the city." In 1880 an act was passed by the legislature, making an appropriation, to erect a soldiers' monument and the governor was empowered to appoint a committee with power to act in all matters necessary for its completion. For its site they selected the square in question, against the consent of the city park commission and an injunction was granted in the lower court to prevent its erection there. The Supreme Court however held, that "the donation of 'the public square' in the city of Cleveland by the Connecticut Land Company was not made to the city of Cleveland but to the public generally" and "it was therefore competent for the legislature to authorize the erection of a soldiers' monument" (this being a work of a public character and for the benefit of all) "upon this square without the consent of the city."